IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEAL NO. 245 OF 1996

MADHUKAR GUNDA JADHAV,)
Age: 22 years, resident of)
Patankar Savarde, Dist. Kolhapur.)..APPELLANT
(Orig. Accused No.1)

VERSUS

THE STATE OF MAHARASHTRA)..RESPONDENT

Shri Indrajit Joshi i/b. Shri A.P.Mundargi for the Appellant.
Shri B.H.Mehta, P.P. for the State.

CORAM: S.K.SHAH,J.
DATE: 30th November, 2004.

ORAL JUDGMENT :

1. The appellant-accused No.1 has filed this Appeal against the order of conviction and sentence passed by the Special Judge, Kolhapur, in Special Case No.17 of 1994 whereby the appellant-accused No.1 was held guilty of the offences punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Section 7(1)(d) of the Protection of

Civil Rights Act, under Sections, 323, 504 and 506 of I.P.C. and sentencing him for simple imprisonment for six months on first count, S.I. for one month on each of the other counts.

2. Briefly stated, the story of the prosecution is as under :-

The complainant - Ganpati Dhondiba Lokare and the appellant are the residents of Village Patankar Savarde, Taluka Radhanagari, District Kolhapur. On 29.4.12994 at 9.30 p.m. there was quarrel between the son of the complainant and the son of the accused who were playing cards and giving bets. On the next day, i.e. 30.4.1994, the accused met the complainant at about 7.30 p.m. and suddenly lifted the complainant and dropped on the ground on suspicion that the complainant might have lodged police complaint against the accused. The complainant allegedly reported that incident to the Sarpanch and Deputy Sarpanch Parasu Kamble (PW-4). The Deputy Sarpanch (PW-4) asked the complainant to meet them in Chavadi on the next morning i.e. the morning of 1st May, 1994.

Accordingly, the complainant went to Chavadi at 7.00 a.m. and met the Deputy Sarpanch Parasu Kamble there. The accused also came there. There was discussion

about the earlier incident between them. Immediately thereafter, the accused allegedly took out knife from his pant and was about to give a blow with it to the complainant - Ganpati. However, one Shivaji Kamble held the accused by his waist and disarmed by removing the knife from him. In the said scuffle, Parasu Kamble (PW-4) was hurt at his waist on the left side. It is alleged by the prosecution that while the accused was inflicting the blow on the complainant, he was abusing the complainant by addressing him "Chambhardya", further threatening that he will see him (the complainant). Since the accused was disarmed, he then started going home. It is further alleged that on his way home, the accused allegedly assaulted the complainant’s wife,Parvati,with the stick.

The complainant then went to the Police Outpost and reported the matter to the Head Constable, Maruti Nikade (PW-7) who was attached to the Police Outpost. Nikade (PW-7) then visited the village along with the complainant, verified the allegations made by the complainant and went back to the Police Outpost and recorded the FIR. He then prepared prelimniary report and sent the FIR along with the report to the Radhanagari Police Station, where the offence was registered at C.R. No.6/1994. In the meantime, the Constable Nikade had sent Parasu (PW-4) and Parvati

(PW-5) to the Medical Officer for medical examination. Further investigation was carried out by API Mane during which he recorded the statements of various persons and attached the knife produced by Krishna More, Police Patil (PW-3). After completion of investigation, the charge-sheet came to be filed in the Court of Judicial Magistrate. The learned Magistrate on finding that the offence was exclusively triable by the Special court, committed the case to the Special Court, Kolhapur.

3. The appellant who was tried along with the other three accused pleaded not guilty to the charges levelled against them. Their defence was of total denial.

4. The evidence that was led before the Special Court consisted of Bhikaji Nana Kamble (PW-1),the panch to the panchnama of seizure of knife, Ganpati Lokare (PW-2), the complainant, Krishna More, Police Patil (PW-3), Parasu Kamble (PW-4), injured Parvati (PW-5), wife of the complainant and the Head Constable Nikade (PW-7). On evidence, the learned Special Judge, while acquitting the accused Nos. 2 to 4 of all the offences, passed the aforesaid order of conviction and sentence against the appellant who is accused No.1. This order of conviction and sentence is assailed in

this Appeal.

5. The learned Counsel for the appellant submits that the evidence of prosecution witnesses is contrary to each other and there are material contradictions. The learned Counsel further submits that the incident was small one and, therefore, strictest scrutiny would be necessary and having done so, in his submission, the evidence of the complainant cannot be believed. In his submission, the accused is entitled to the benefit of doubt. He also further submits that there is actually no offence was committed punishable under Section 323 of I.P.C. as PW-4 Kamble has not described the injuries nor there is any medical certificate produced. Similarly, the evidence of Police Patil does not inspire confidence and there is no evidence to show that hurt was caused.

6. As against this, the learned APP supported the judgment of the trial Court. He submits that although the evidence of Kamble (PW-4) is exaggerated one, in that he states about the accused having abused on the ground of caste not only the complainant but all other persons, his evidence, at the most, could be brushed aside. In his submission, the evidence of Krishna More (PW-3) fully supports and corroborates the evidence of the complainant. Therefore, the conviction of the

accused for all the offences except for the offence punishable under Section 323 of I.P.C. should be maintained.

7. I have been taken through the entire evidence led by the prosecution. The perusal of the evidence of the complainant shows that on the day of the incident i.e. on 1.5.1994, at 7 a.m. he went to the Chavadi where he was called by the Deputy Sarpanch and the Police Patil Krishna More (PW-3). He states that as he reached, Deputy Sarpanch, Police Patil, Kamble(PW-4) and Shivaji Ganpati Kamble were present. The accused was called there. There was discussion about the earlier incident. He states that on the earlier day, the accused assaulted him suspecting that he might have lodged the complaint against Sadashiv. Immediately thereafter, he states, the accused took out knife from his person and was about to give a blow with it to him. However, Parasu Kamble and Shivaji Kamble held the accused and prevented the blow. While snatching the knife from the accused’s hand, Parasu Kamble (PW-4) was hurt. He further states that at the time of attempting the blow with knife, the accused was abusing him calling him as "Chambhardya" and further adding that he will see him. He further states that thereafter the accused went to his house. By that time, his wife, Parvati, was coming to Chavadi. Accused assaulted her with the stick. Thereafter, villagers arrived there.

Then he went home. Thereafter he himself along with his son Tanaji went to Police outpost at village Savarde and lodged FIR and then went to the Radhanagari Police Station. This is what the short incident narrated by the complainant.

8. In corroboration to this evidence, there is the evidence of Krishna More (PW-3), Police Patil. He states that on the day of the incident at about 7 to 8 a.m., he himself, accused, complainant, Sarpanch, Deputy Sarpanch and villagers were present in Chavadi for discussion with regard to the quarrel between the complainant's son and the accused. He states that at that time, exchange of words took place between them i.e. Tanaji and the accused. Immediately thereafter, the accused took out knife and tried to assault the complainant. Parasu Kamble and Shivaji Kamble snatched the knife from the accused during which scuffle, Parasu Kamble (PW-4) was hurt. He further states that the accused was abusing the complainant over his caste saying "Chambhardya I will see you". He further states that he took knife from his custody and subsequently handed over to the Police at the time of panchnama. This witness admits in his cross-examination that he arrived at Chavadi lastly. He admitted in his cross-examination that he had not made entry of the occurrence in the Visit Book. The police had not

recorded his statement.

9. The witness - Parasu Kamble (PW-4) has stated that he arrived at Chavadi at 7 a.m. He states that he went there to inform the Sarpanch and Police Patil that the complainant was assaulted by the accused on the earlier day. He states that it was decided to make enquiry about the said incident. He further states that he himself, accused, complainant, complainant's son, Sarpanch and Shivaji Kamble were present in the Chavadi. There was discussion regarding the incident. He states that at that time the accused took out knife and started moving around showing it to the complainant and others and abusing them uttering the words "Chambhardyano, Mharadyano why they had called him in Chavadi. He further states that he himself and Shivaji Kamble caught the accused from behind from the backside and snatched the knife from his hand. In the process, he was hurt on the waist at left side. He handed over that knife to the Police Patil.

10. Then there is evidence of Parvati (PW-5) wife of the complainant who states that while she was going to Chavadi, the accused came from opposite direction and inflicted two stick blows on her left leg and on the buttock. Sarpanch Kundlik Patil (PW-6) was examined. According to the prosecution, he turned hostile and did

not support the prosecution.

11. On the evidence which was led by the prosecution, at the outset, it should be borne in mind that with such small incident with regard to the offence under the two statutes, viz. the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act and the Protection of Civil Rights Act which attracts punishment of minimum six months imprisonment, there has to be strictest scrutiny of the evidence to positively rule out the possibility of false implication in such cases.

12. Here the incident is very small. In the morning of 1st May, 1994, the Sarpanch, Deputy Sarpanch, complainant and the accused had assembled at the Chavadi for the purpose of discussing the grievances of the complainant and the quarrel between the complainant and the accused. At that time, the accused suddenly took out knife and tried to give a blow with it on the complainant, but the blow was saved by other two persons. While attempting the blow, it is stated that the accused was abusing and threatening the complainant by saying "Chambhardya,I will see you". The evidence to that effect is given by the complainant and which evidence has been corroborated by Krishna More (PW-3), Police Patil. However, the evidence of Parasu Kamble

(PW-4) who was present there from the beginning gives a different story. The complainant - PW-2 and Krishna More (PW-3) Police Patil have given story that the accused had attempted to assault the complainant and while making that attempt he was threatening and abusing the complainant by saying "Chambhardya,I will see you". The version of Parasu Kamble (PW-4) however, is totally different. He does not state that the accused had attempted a blow with knife on the complainant. He also does not state that the accused was abusing the complainant by calling him "Chambhardya". He also does not state that the accused had threatened the complainant by saying that he will see. What he states is that the discussion was going on regarding the incident and at that time the accused took out knife and started moving around showing it to the complainant and all others. He further states that the accused was abusing all of them by uttering the words "Chambhardyano, Mharadyano why they have called him in Chavadi. Therefore, his evidence has given totally a different story though with regard to the same incident. This witness has not been declared hostile. Here is the witness whose presence at the time of the incident is not in doubt because, according to the prosecution and the very witness was injured at waist on the left side by the knife.

13. The learned APP submits that the evidence of Parasu Kamble (PW-4) may be said to be exaggerated in that, according to this witness, the accused was not only abusing the complainant but was abusing all the persons present there and that accused was moving knife around showing it not only to the complainant but all others. Therefore, he submits that this exaggerated version if one takes it strictly as it means in his submission, the evidence of this witness supports the case of the prosecution that some incident had taken place on that day at particular time. In his submission, at the most, the evidence of this witness may be discarded. He submits that the complainant's evidence is fully corroborated by the Police Patil, Krishna More (PW-3).

14. However, it is not acceptable submission that the evidence of witness (PW-4) should be totally discarded because not only it is the case of prosecution that he was present but other witnesses had also spoken about his presence at the time of the incident and moreover this witness himself was the person who snatched the knife from the hand of the accused. In that attempt, he himself got hurt.

15. The case of the prosecution is specific, in that the accused had attempted the blow on the complainant

and in that attempt he had abused and threatened the complainant by saying "Chambhardya, I will see you". If this is the specific case, the evidence given by Parasu Kamble is totally contrary. Moreover, Parasu Kamble, is silent about the threat allegedly given by the accused to the complainant. From the evidence of Parasu Kamble, the grievance of the accused was as to why he was called there and it is needless to say that accused was called by the Sarpanch and not by the complainant, though it may be at the instance of the complainant.

16. The other lacuna in the prosecution evidence is that, according to the Head Constable, Maruti Nikade (PW-7), he had sent witnesses Parasu Kamble (PW-4) and Parvati (PW-5), the wife of the complainant, for the medical examination. However, no medical certificate is produced. The story about the accused having assaulted Parvati (PW-5) with stick also does not appear to be believable. According to her, she was assaulted by the accused with stick on her left leg and buttock. However, no medical certificate is produced. The injuries sustained by witnesses Parasu Kamble (PW-4) and Parvati (PW-5) have not been described by these witnesses. In order to support the case of assault on Parvati (PW-5), the complainant, for the first time, in his evidence, states that he had seen

the incident of assault. He states that he had seen Parvati coming to Chavadi and accused assaulting her with stick. He further states that villagers arrived there. However, Parvati (PW-5) admits in cross-examination that the assault made on her by the accused was in her Galli where no one was present there. She raised alarm, but nobody assembled. She further states that she fell unconscious which was never the case of the prosecution. Therefore, there appears to be an attempt not only to exaggerate the incident but an attempt to involve the accused somehow or the other probably due to the earlier quarrel.

17. Considering all these aspects when there is a strictest scrutiny and the evidence is of the type discussed above, it creates doubt as to the exact occurrence as alleged by the prosecution. The allegations with regard to the abuse and threat are easy to make but difficult to prove. In the present case, the knife which had allegedly caused hurt to Paasu Kamble (PW-4) was not sent to the Chemical Analyser. The panchnama also does not suggest that it was blood stained. If really PW-4 was hurt by the knife, corroborative evidence could have been found and that knife was sent to the C.A. But that was not done. Non-production of the medical evidence gives rise to an adverse inference.

18. There is a contradiction in the evidence of the complainant (PW-2) and Police Patil (PW-3). The Police Patil (PW-3) states that at the time of the incident, there was exchange of words between the accused and the complainant which resulted into instigating the accused to take out knife and attempt a blow on the complainant. However, the complainant himself has not stated anything about it. He only states about the discussion but not about exchange of words. It is admitted by Police Patil - Krishna More (PW-3) that he came there last. However, the complainant has shown the presence of Police Patil since beginning. Therefore, it is not clear as to when the Police Patil, Krishna More arrived at the spot.

19. Apart from this, the aforesaid lacunas, in my opinion, create doubt about the exact occurrence of the incident, although it is not in dispute that such meeting was held in the morning of 1st May, 1994 with regard to the earlier incident. It is clear that the conviction of the accused for the offence punishable under Section 323 of the I.P.C. is untenable. In view of the aforesaid circumstances, the accused was entitled to the benefit of doubt. The trial Court, therefore, committed an error in passing the order of conviction and sentence. The same has to be set aside.

20. Hence, the following order :-

O R D E R

The Appeal is allowed. The order of conviction and sentence passed against the appellant-accused for the offences punishable under Section 3(1)(x) of the Scheduled Castes and scheduled Tribes (Prevention of Atrocities) Act, Section 7(1)(d) of the Protection of Civil Rights Act, Sections 323, 504 and 506 of the Indian Penal Code is hereby set aside. The appellant-accused stands acquitted of all the offences. His bail bonds shall stand cancelled.

(S.K.SHAH,J.)